

**Department of Planning and Zoning
Response to the Department of Community Affairs'
Objections, Recommendations and Comments (ORC) Report
DCA No. 05-2ER Addressing the October 2004 Cycle
Applications to Amend the CDMP
December 5, 2005**

Introduction

This report contains responses of the Department of Planning and Zoning (DP&Z) to the objections contained in the referenced Objections, Recommendations and Comments (ORC) report issued by the Florida Department of Community Affairs (DCA) September 2, 2005. There were four objections issued in the ORC report

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In the following presentation, the DCA's Objections and corresponding Recommendations are presented, followed by an initial response from the Department of Planning and Zoning. DCA Comments are similarly addressed, although State planning rules do not require responses to Comments. The issuance of the DP&Z responses contained herein does not preclude the issuance of other future responses by the Department. Moreover, the responses issued by the Department are not necessarily those of the Local Planning Agency or the Board of County Commissioners, which may offer their own responses.

DCA Objections

DCA Objection No. 1: Concurrency Management System

Paragraph A under the Concurrency Management System section of the comprehensive plan incorrectly allows park and recreation facility concurrency to be met if the necessary parkland is acquired no later than 12 months after issuance of a certificate of occupancy if the development is located within the Urban Development Boundary. F.A.C. Rule 9J-5.0055(3)(b), which sets forth the minimum standards to satisfy the concurrency requirement for parks and recreation facilities, states that at the time of issuance of the certificate of occupancy the acreage for the necessary facilities and services to serve the new development is dedicated or acquired by the local government, or funds in the amount of the developer's fair share are committed. The local government has 12 months after issuance of a CO to put in place the necessary recreation facilities and services needed to serve the new development. See also section 163.3180(2)(b), Florida Statutes.

Criterion 5 in the Miami-Dade County concurrency management system excepts, from meeting transportation concurrency, projects which result in an increase in peak period traffic volume on a FIHS roadway operating below the LOS standards as a result of the project and which increase would exceed 2 percent of the capacity of the roadway at the adopted LOS standard. This

provision only applies to FIHS facilities with a TCEA, and therefore it should be understood as interpreting or complying with s.163.3180(5)(d), F.S., regarding concurrency management:

A local government shall establish guidelines for granting the exceptions authorized in paragraphs (b) and (c) in the comprehensive plan. These guidelines must include consideration of the impacts on the Florida Interstate Highway System, as defined in s.338.001. The exceptions may be available only within the specific geographic area of the jurisdiction designated in the plan. Pursuant to s.163.3184, any affected person may challenge a plan amendment establishing these guidelines and the areas within which an exception could be granted.

Within TCEAs and specifically applying to FIHS facilities operating below the CDMP-adopted LOS standard, Criterion 5 requires developers to keep their traffic volume increase to 2 percent or less. Criterion 5, while it does limit the impact of an individual project on a FIHS facility to 2 percent, does not prevent an incremental deterioration of the FIHS facility, as project after project worsen the facility 2 percent at a time. Note, in this context, s.163.3180(6), F.S., which allows a 1 percent de minimis impact on a roadway; however, this statutory provision includes protection against incremental effects and protection for hurricane evacuation routes as follow:

No impact will be de minimis if the sum of existing roadway volumes and the projected volumes from approved projects on a transportation facility would exceed 110 percent of the maximum volume at the adopted level of service of the affected transportation facility; provided however, that an impact of a single family home on an existing lot will constitute a de minimis impact on all roadways regardless of the level of the deficiency of the roadway. Local governments are encouraged to adopt methodologies to encourage de minimis impacts on transportation facilities within an existing urban service area. Further, no impact will be de minimis if it would exceed the adopted level-of-service standard of any affected designated hurricane evacuation routes.

The County's Criterion 5 should be amended to limit the sum of incremental impacts and to protect hurricane evacuation routes.

DCA Recommendation: Amend the Concurrency Management Program in the Comprehensive Master Development Plan (CDMP) to require that at the time of issuance of the certificate of occupancy the acreage for the necessary facilities and services to serve the new development is dedicated or acquired by the local government, or funds in the amount of the developer's fair share are committed.

DP&Z Response: The Department agrees and has proposed revisions to Paragraph A 2) under the Concurrency Management Program section in the Capital Improvement Element of the CDMP to reflect current Rule 9J-5 requirements. The revisions can be found on page 2-44 of the Revised Recommendations Report *Second Edition* dated November 30, 2005.

Additionally, the Department has prepared revisions to Paragraph B (also found on page 2-44) to clarify that the reference applies only to A 2), and 3). This will further clarify that "water, sewer,

solid waste and drainage facilities must be in place and available at the time of issuance of a CO.”

DCA Recommendation: Amend Criterion 5 in the concurrency management system to limit the sum of incremental impacts and to protect hurricane evacuation routes. The County may also wish to consider the new requirements added to the concurrency s.163.3180(6) in this year’s legislative changes to Chapter 163, Part II, F.S. (see Chapter 2005-290, Laws of Florida).

DP&Z Response: Criterion 5 – The Department disagrees with DCA’s current objection relating to limiting the sum of incremental impacts to Florida Intrastate Highway System (FIHS) facilities in transportation concurrency exceptions areas (TCEA). The CDMP’s current adopted TCEA text in the Capital Improvements Element is not proposed as an EAR-based amendment in this cycle. The current adopted TCEA text was the subject of a Notice of Intent issued on December 12, 1994, Docket No. 94-2-NOI-1301-(A)-(I) for amendments adopted by Ordinance 94-192 on October 13, 1994. In fact, a similar DCA objection was addressed by the County in its October 1994, responses to the DCA’s ORC Report for the November 1993-94 Cycle (DCA Amendment No. 94-2). In the ORC, dated September 1, 1994 addressing the November 1993-94 amendment cycle, DCA expressed concerns with the policy of the County’s cumulative analysis of the effects of the proposed amendment upon the FIHS not being provided, and not specifically considering the impacts of the exception are upon the FIHS, and not defining the adopted level of service standards for FIHS roadways. In it’s response dated September 21, 1994, the County clarified that Section 163,3180(5)(d), F.S., requires local governments to establish guidelines for granting the infill, redevelopment area, part-time demand, and public transit supportive transportation concurrency exceptions, and that such guidelines must include consideration of the impacts on the Florida Intrastate Highway System (FIHS). The County noted that during the adoption hearing of the November 1993-94 amendment cycle, the Board of County Commissioners made a change in partial response to DCA’s objection that adequate consideration was not given to the impacts of the concurrency exceptions on FIHS roadways. The changes were: 1) tightening the threshold of peak-period traffic impact of a development from 5% to 2% of FIHS roadway capacity; and 2) added a condition that would catch developments whose approval would cause an FIHS road to operate below the LOS standards. In addition, Policy 1H was added to the Traffic Circulation Subelement indicating the County would give the highest priority to funding the necessary capacity improvements to FIHS roadways and to facilities and services that would serve to relieve congestion on FIHS facilities which operate above their capacity, and to minimize local traffic impact to FIHS facilities.

Further, in the ORC of November 1993-94, DCA expressed concerns with the County’s criteria for granting a concurrency exception based upon de minimis impacts which do not exceed 5% of the roadway’s capacity as inconsistent with Rule 9J-5. This is similar to DCA’s current concern regarding the sum of incremental impacts. The County’s response noted that DCA mistook the proposed policy regarding the FIHS roadway system to be the County’s proposed de minimis exception policy. The County’s proposed de minimis policy was not then, or is not now, based on 5% of a roadway’s capacity as indicated in the 1994 ORC. The County’s proposal would specifically adopt all of the criteria enumerated in Section 163.3180(6), F.S., which defines de minimis impacts for all areas outside TCEAs.

Specifically as it regards the limitation on the sum of individual impacts to FIHS facilities, nowhere does the statute require this limitation for FIHS facilities, it only states that the affect on FIHS facilities be considered, which the County demonstrated it did back in 1994 and DCA still concedes that today. The de minimis provision of the statute by definition does not apply to TCEA's.

The Department believes the appropriate time to further address the core of DCA's objection is when the County's Concurrency Management Program must be comprehensively reviewed and revised, in accordance with the statutory time frames established in Chapter 2005-290, Laws of Florida to address the new transportation concurrency exception area requirements in s.163.3180(5), F.S. and the new de-minimis exception changes in s.163.3180(6), F.S.

The Department agrees with DCA that the de minimis exception should not apply to roadway facilities designated as hurricane evacuation routes, as noted in Section 163.3180(6), F.S. Therefore as indicated on page 2-45 of the Revised Recommendations Report *Second Edition* dated November 30, 2005, a new criterion has been added to the de minimis exception so that no traffic impact shall be allowed to exceed the CDMP adopted level of service standard of any affected hurricane evacuation route.

DCA Objection No. 2: Amendments to the Future Land Use Map, Parcels 63, 75, 88 and 110 and Amendments to the Environmental Protection Subareas Text.

The South Florida Water Management District (SFWMD) has raised an issue with regard to four of the proposed FLUM (Future Land Use Map) amendments and an amendment to the Environmental Protection Subareas text. The County is proposing to change the FLUM designation on the following four parcels that the SFWMD owns, has interest in, has targeted for ownership, and/or is a partner with the Federal government for implementation of the Comprehensive Everglades Restoration Plan (CERP):

Parcel No. 63 (C-4 Emergency Detention Basin)
Parcel No. 75 (Shark River Slough Flow-way)
Parcel No. 88 (Rocky Glades Transition Zone)
Parcel No 110 (Frog Pond)

The current FLUM designation for Parcels 63 and 75 is Open Land, while the current FLUM designation for Parcels 88 and 110 is Agriculture. The proposed FLUM designation for all four parcels is Environmental Protection. The SFWMD maintains, however, that it needs flexibility in implementing the CERP as well as other environmental restoration and flood protection projects. The definition of the Environmental Protection FLUM category may unduly limit the kind of project allowable on the land and impede rather than facilitate environmental restoration of the Everglades. A more general definition is desirable, according to the SFWMD, so that a variety of water management practices are permissible, including but not limited to water supply development, water storage, flood protection, stormwater attenuation, aquifer storage and recovery, seepage management, wetland enhancement/mitigation, stormwater treatment areas,

water quality treatment, recharge areas, and ancillary uses of the facilities for administrative, recreation, and educational purposes.

The SFWMD is also concerned about the timing of the proposed land use changes, as they may result in unintended adverse consequences as outlined below.

(1) The SFWMD has partnered with the US Army Corps of Engineers on restoration efforts for the Shark River Slough, the Rocky Glades Transition Area, and the Frog Pond CERP Projects. This partnership includes a project cost-sharing agreement between the State and Federal government. The SFWMD buys the land needed for the project, then later negotiates and enters into a cost-sharing agreement with the Federal government on the project. As previously mentioned, the proposed land use changes may reduce or eliminate the current allowable uses. Decreasing the market value such acquired lands, prior to the conclusion of the cost-sharing agreement with the Federal government, could significantly, and adversely, impact the State's recovery of its cost-share portion for these projects.

(2) The SFWMD sometimes acquires more land in a specific location than it ultimately ends up needing for a particular project. In such instances, these surplus lands may be made available to either private or public interests, consistent with state law. In certain situations, priority consideration must be given to buyers, public or private, who are willing to return the property to productive use, as long as they property can be re-entered onto the County's ad-valorem tax roll (See Section 373.089, FS). The proposed land use changes from "Open Land" and Agriculture" to "Environmental Protection" and related text amendments to the Environmental Protection Subareas may reduce or eliminate the current allowable uses. This may adversely affect the SFWMD's ability to sell surplus lands for other productive uses. It may also adversely affect the County's recapture of ad-valorem tax revenues from such lands after they have been surplus by the SFWMD ...

The SFWMD has described these four FLUM amendments as having the potential to adversely affect it efforts to implement the CERP. In view of the importance to the State of Florida of the CERP, the Department objects to the proposed FLUM changes and to the associated amendments to the Environmental Protection Subareas text on the basis that the amendment does not demonstrate adequate coordination with the South Florida Water Management District and is not consistent with the State Comprehensive Plan. Note that the State Comprehensive Plan contains a specific policy under the Natural Systems and Recreational Lands, which emphasizes restoration of the Everglades:

Policy 8. Promote restoration of the Everglades system and the hydrologic and ecological functions of degraded or substantially disrupted surface waters.

DCA Recommendation: Miami-Dade County should not adopt the amendments changing the future land use designations for Parcel No 63 (C-4 Emergency Detention Basin), Parcel No. 88 (Rocky Glades Transition Zone), and Parcel No 110 (Frog Pond). The County should coordinate

with the South Florida Water Management District to determine the appropriate future land use designation for these parcels.

DP&Z Response: The Department maintains that these four redesignations are necessary for proper long range planning in the County and protection of valuable hydrologic and ecologic resources. The Department also maintains that such a redesignation will not change zoning or allowable land uses and therefore should not impact land values. The Department conversed and/or met with DCA and the SFWMD on several occasions prior to the issuance of the ORC to explain the County's reasons behind the redesignation of these parcels and to address the concerns of the SFWMD. Additionally, the County disagrees with the DCA's statement that these actions would be inconsistent with State Comprehensive Plan Policy 8 as noted above, since one purpose of the County's Environmental Protection land use designation is to protect those hydrological and ecological areas necessary for restoration of the Everglades; the redesignation will therefore promote this policy. However, the Department has withdrawn the four parcels, Parcel No 63 (C-4 Emergency Detention Basin), Parcel No. 75 (Shark River Slough Flow-way), Parcel No. 88 (Rocky Glades Transition Zone), and Parcel No 110 (Frog Pond), so that further discussions DCA and the SFWMD can take place regarding the appropriate conditions under which redesignation of the parcels could be filed in a future amendment cycle.

DCA Objection 3: New Mixed-Use Development Future Land Use Category

The County proposes to add a new Mixed Use Development FLUM category (Future Land Use Element, paragraph reference numbers 133-135). The Department objects to the proposed definition of Mixed Use Development because it does not specify a maximum or even a range of residential density, in terms of dwelling units per acre. The definition of Mixed Use Development specifies maximum intensities of development, but not a maximum residential density.

DCA Recommendation:

1. Revise the Mixed Use Development category to include a maximum residential density; or
2. Define the Mixed Use Development category as an overlay district, with the maximum residential density being limited by the underlying residential future land use designations.

DP&Z Response: The Department partially agrees with these objections. DCA in its objection refers to mixed-use development as a land use category on the Land Use Plan (LUP) map or an overlay district. However, it is neither. Mixed-use development is a type of development that may occur if certain conditions regarding type of area (major corridors and neighborhood activity centers) and compatibility are met in the LUP map categories of Low-Medium Density, Medium Density, Medium-High Density, High Density; Business and Office; and Office/Residential.

To address the concern of DCA for the provision of maximum residential densities in Mixed Use Development areas, the Department has included on page 2-32 of the Revised Recommendations Report *Second Edition* dated November 30, 2005 a table on maximum intensities and densities in

major corridors and neighborhood activity centers. This table provides a maximum residential density of 36 dwelling units per acre for major corridors and a maximum residential density of 18 dwelling units per acre in neighborhood activity centers. To address the concern with underlying land use designations, the revised text of the section states, “The maximum intensities and densities shall be the greater of those provided in the table below or the maximum intensities and densities of the underlying land use designation.”

The problem with having a maximum density for the residential portion and a maximum intensity (i.e. floor area ratio) for the non-residential portion in a mixed use building, one could end up with a structure that is more massive than a purely residential building built at the maximum density or a purely non-residential structure built at the maximum floor area ratio. To control the mass of structures in vertical mixed use areas, the following sentence was included on page 2-32 of the Revised Recommendations Report: “However, the entire development must fit within the building envelope established by the floor area ratio.”

DCA Objection 4: Urban Centers

The Master Comprehensive Development Plan (sic) describes Urban Centers (Future Land Use Element, pages 68-69, in the “Staff Applications” portion of the amendment package) as planned hubs for future development intensification. Urban Centers are mapped on the Future Land Use Map. They allow and encourage residential development; however, the comprehensive plan description of Urban Centers does not provide a residential density cap. It does specify “moderate to high density residential uses”, but these appear to be descriptive terms rather than a reference to defined residential future land use categories (note that the Comprehensive Master Development Plan (sic) contains a “High Density Residential” future land use category, but not a “Moderate density” future land use category). The Urban Centers description also states that densities of residential uses “shall be authorized as necessary for residential or mixed-use developments in Urban Centers to conform to these intensity and height policies”. It is not clear whether this refers to authorizing existing future land use categories of residential development.

The Department objects to the definition of the Urban Centers land use because it does not specify a maximum residential density.

DCA Recommendation:

Revise the Urban Centers description to either:

1. Make clear that it refers to existing defined residential FLUM categories; or
2. Provide a density range for its residential component.

DP&Z Response: The Department is concerned that DCA objected to the lack of maximum residential densities in the existing adopted text for “Urban Centers” in the CDMP since it was not included as an EAR-based Amendment in the “Applications” report for the October 2004 Cycle. The “Urban Centers” text in the Land Use Element was amended in April 1995 as a result of an amendment filed in the May 1994 CDMP Amendment Cycle to include among other things, development intensity guidelines of urban centers based on Floor Area Ratios (FARs).

(Up until 1995, Urban Centers were referred to as Activity Centers) The DCA ORC issued on March 3, 1995 raised no objections and made no comments regarding maximum residential density caps. The “Urban Centers” text was additionally amended during the EAR-based amendments of November 1995 and the DCA ORC issued on August 23, 1996 again made no objections or comments regarding maximum residential density caps. The Department questions the authority of DCA to raise such objections now after the text has been through multiple compliance reviews. Regardless, the Department responds as follows.

Intensity is the degree to which a property is used. Residential intensities, more commonly referred to as densities, are typically measured as the number of dwelling units per acre. Non-residential intensities are generally measured as floor area ratios (FARs), which for a particular property is the square footage of the buildings (not counting parking structures) divided by the net land area of the parcel.

Currently, the adopted text of the Land Use Element on Page I-40 provides guidance on the intensities of development that could occur with the three scales of urban centers: regional, metropolitan and community. Regional and Metropolitan Urban Centers shall be intensively developed. They should be developed at the highest intensities of development in the urbanized area. FARs in Regional Urban Centers designated on the LUP map should average not less than 4.0 in the core of the center and around mass transit stations, and should taper to an average of not less than 2.0 near the edge of the center. Average FARs for developments in Metropolitan Urban Centers designated on the LUP map should be not less than 3.0 at the core adjacent to transit station sites and should taper to not less than 0.75 at the edge. Community centers should average an FAR of not less than 1.5 at the core adjacent to transit station sites and should taper to an average of approximately 0.5 at the edge, but around rail rapid transit stations they should be developed at densities and intensities no lower than those provided in Policy 7F. The height of buildings at the edge of Metropolitan Centers that adjoin stable residential neighborhoods should taper to a height no more than 2 stories higher than the adjacent residences, and one story higher at the edge of Community Centers. However, where the adjacent area is undergoing transition, heights at the edge of the Center may be based on adopted comprehensive plans and zoning of the surrounding area. With regard to densities, the current text does state on Page I-40 “Densities of residential uses shall be authorized as necessary for residential or mixed-use developments in Urban Centers to conform to these intensity and height policies.”

The addition of language on maximum densities to the “Urban Center” text may make it easier for the general public to understand the scale of development that could occur in the various types of urban centers. To address the concern of DCA for the provision of maximum residential densities, the Department recommends on page 2-33 in the Revised Recommendations Report *Second Edition* dated November 30, 2005, to add a table on average intensities (based on floor area ratios) and maximum residential densities for the three scales of urban centers. The table states that the maximum residential density is 500 dwelling units per gross acre in a Regional Urban Center, 250 dwelling units per gross acre in a Metropolitan Regional Center and 125 dwelling units per gross acre in Community Urban Centers.

The only existing Regional Urban Center in Miami-Dade County is downtown Miami. The comprehensive plan for the City of Miami limits the maximum residential density in the

downtown area to 500 dwelling units per acre. Thus, a maximum density of 500 dwelling units per acre for Regional Urban Centers would be consistent with the policy of the City.

The most developed Metropolitan Urban Center in the unincorporated Miami-Dade County is the one served by the Dadeland North and the Dadeland South Metrorail Stations. The urban center zoning district for this Metropolitan Urban Center has a maximum residential density for the edge but only maximum intensity and height restrictions for the core. Intensities are used in the core to limit the mass of the buildings. However, the maximum intensity in the core is equivalent to approximately 250 dwelling units per gross acre. Based on DP&Z's experience in preparing area plans for Community Urban Centers, a maximum of 125 dwelling units per gross acre could be developed.

DCA COMMENTS

DCA Comments 1. Concurrency Management System:

Paragraph B under the Concurrency Management System section of the comprehensive plan is intended to provide "assurance that the facilities will be constructed or acquired and available within the timeframes established in forgoing paragraph A". However, it is not readily apparent which criteria in paragraph B apply to which facilities in Paragraph A. The concurrency requirements set forth in Rule 9J-5.0055, F.A.C., vary according to the particular facility. Because of this, the criteria in paragraph B are not all applicable to all of the facilities in paragraph A. For example, the standard in subparagraph B-1, "the necessary facilities and services are under construction at the time the building permit is issued," does not meet the Rule 9J-5.0055(3)(a) requirement that sanitary sewer, solid waste, drainage, and potable water facilities must be in place at the time the certificate of occupancy is issued.

DP&Z Response: See DP&Z response to Objection 1 above.

DCA Comment 3: Institutions, Utilities, and Communications Future Land Use

A new paragraph under the Institutions, Utilities, and Communications future land use designation in the Future Land Use Element (refer to paragraph 144 in the "Staff Applications" in the amendment package) allows electric power transmission line corridors in every land use category when located in "established right-of-ways or certified under the Florida Electric Power Plant Siting Act". Please note that electric transmission lines may be certified under the Florida Electric Power Siting Act as an ancillary use to a new power plant or certified on their own under the Transmission Line Siting Act (ss. 403.52 – 403.5365, F.S.).

DP&Z Response: The Department agrees with the DCA comment. The "Revised Recommendations" report contains new text for the paragraph in the Land Use Element that has references to both the Florida Electric Power Plant Siting Act and the Transmission Line Siting Act. This revised wording can be found on page 2-34 of the Revised Recommendations Report *Second Edition* dated November 30, 2005.

DCA Comments 6: Port of Miami River Sub-Element:

Proposed new Policy PMR-4D would elevate security requirements, as set forth in the MRC Security Plan, above other objectives in the Port of Miami/ River Sub-Element. Because the policy subordinates objectives in the sub-element to requirements set forth in the MRC Security Plan, it therefore should be understood as incorporating the MRC Security plan by reference. Accordingly, Policy PMR-4D should cite the MRC Security Plan pursuant to the requirements for incorporation by reference in F.A.C. Rule 9J-5.005(2)(g).

DP&Z Response: The Department agrees with the comment. New policy PMR-4D will be revised to change the name of the security plan to Miami River Port Security Plan and to clarify that: “In the event of an apparent conflict between the Miami River Port Security Plan requirements and local, state and federal law and/or agency directives and other objectives in any Subelement, the Homeland Security-based requirements shall prevail.” This revised language can be found on page 2-42 of the Revised Recommendations Report *Second Edition* dated November 30, 2005.